IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2399 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANMUKHALAL MAGANLAL RANA

Versus

EXECUTIVE ENGINEER

Appearance:

MR DR BHATT for Petitioner No. 1

Mr.K.R.Pandya, ASSTT. GOVERNMENT PLEADER

for Respondent No. 1-3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 24/10/2002

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for a direction to the respondent nos. 1,2 and 3 to grant him promotion to the post of Junior Clerk

with effect from 12.8.1988 when his junior has been given promotion and direct the respondents to pay him arrears of salary by way of different as if he was promoted on12.8.1988.

2. It is stated that the petitioner was appointed on 15.12.1969 as work-charged clerk. He had served the department for about 19 years and there was nothing against him. He was given promotion as a temporary clerk in the year 1976. Since then he was rendering his services as a temporary clerk. In the seniority list, the petitioner has been shown at serial no.57, while another person Mr. Bhupendrabhai B. Desai was appearing at serial no. 66. Thus, the petitioner was senior to him. The Government of Gujarat intended to fill up the back log. Hence, from serial nos. 54 to 70, the petitioner as well as one B.B.Desai were found fit for appointment as junior clerk at the relevant time. Therefore, a letter dated 20th June, 1988 was addressed by the respondent no.1 to the Deputy Executive Engineer asking him to send the names of temporary clerk. From the letter dated 2nd June, 1988, the department required consent letters from both these persons including the petitioner. It is stated that the petitioner submitted an application dated 24th June, 1988 to the department concerned for promotion and appointment at Navsari, but the department has ignored the petitioner and appointed Mr. Desai and had promoted Desai in place of the petitioner at Navsari. Though the petitioner had already given consent letter, even then the petitioner was ignored and was not given any promotion order, though the petitioner had requested therefor by a letter dated
24.6.1988. It is also asserted that Mr.B.B.Desai had left his charge as a temporary clerk on 8.8.1988 and he was given promotion and posted at Navsari only though it was the legitimate right of the petitioner which has been denied only due to reason that the petitioner had married with a scheduled caste girl. The petitioner sent several letters to the respondent authorities dated 19.8.1988, 6.10.1988, 27.3.1999, 30.5.1989 and 21.8.1989, but all in vain. Then the petitioner had to give a legal notice dated 9.9.1989 through his advocate. Thus, the petitioner has been denied the legitimate right of promotion as well as posting at Navsari.

3. Affidavit-in-reply has been filed on behalf of the respondent no.1 wherein it is stated that as per the direction from the Roster Cell of Government of Gujarat ti fill up vacant posts of backlog of members of Baxi Panch, the respondent no. 2 issued the order of

promotion of the petitioner from the post of temporary clerk to the post of junior clerk without considering any seniority. The respondent no.1 issued an order of detailed posting of promotees. He was posted at Valsad where the vacant post of junior clerk existed under Navsari division. There was one and only one post in existence at that time and the petitioner could be posted. The petitioner was posted at Valsad without any prejudice. The petitioner was required to resume his duty at Valsad on or before 25th February, 1990, but he had proceeded on long leave and disregarded the orders and he had not joined his duty at the new place. The consent of temporary karkoons who had undergone pre-service training and who was willing to serve as junior clerks on promotion were to be furnished to the respondent no. 2 by the respondent no.1. So, the respondent no.1 had signed the letter dated 20th July, 1988 to the Deputy Executive Engineer, Navsari, Road and Building Sub-division to obtain consent of the temporary clerks in writings to show that he is ready to go to any place of posting under Vadodara zone on promotion from the post of temporary road karkoon to the post of Junior clerk and that he will join the new post with immediate effect on receipt of the orders of promotion. The petitioner had gone and passed pre-service training examination and his name was appearing in the list of such candidates, but he had not given any consent in requisite form though he has submitted an application dated 24th June, 1988 to the respondent no.1 that he may be posted only at Navsari on promotion. He had not submitted his consent as required till the order of promotion of B.B.Desai was issued on 6.8.1988. Though the petitioner has not given consent as required, his application for conditional promotion was not considered. The petitioner as well as Mr. B.B.Desai were serving at Navsari since 1.10.1977. The Superintending Engineer has issued an order of promotion of Shri B.B.Desai on 6.6.1988. By this time, one vacancy of Jr. Clerk existed in Navsari division office. The respondent no. 2 passed an order of promotion of Shri Desai with detailed posting at Navsari and Desai had joined his duties on8.81988 at the place where he was posted. As the petitioner had not furnished the requisite consent, hence he has no legitimate right of promotion. The letters of the petitioner dated 19.8.1988 and 6.10.1988 were received by the Executive Engineer, Navsari. Therefore, the petitioner was once again requested through Deputy Executive Engineer to give his consent as required by the Government letter dated 20th April, 1989. Instead of giving consent, he gave applications to the Executive Engineer dated 24th June, 1988 and 1.8.1988.

Considering the above facts, the Superintending Engineer has confirmed the promotion order of B.B.Desai since there was no vacant post at Navsari and there was a vacancy at Valsad. The petitioner was posted at Valsad with headquarters at Valsad vide order dated 17.2.1990, but the petitioner had not resumed his duty at new place and proceeded on leave. Thus, he lost his right of promotion as junior clerk.

4. The learned counsel for the petitioner states that affidavit-in-rejoinder on behalf of the petitioner was also filed and the copy of that affidavit was given to the Assistant Government Pleader. The learned Assistant Government Pleader has admitted to have received the rejoinder affidavit, but that original re-joinder is not on record. The learned counsel for the petitioner has placed on record a copy of the rejoinder affidavit wherein it is stated that the petitioner was requird vide communication dated 2.7.1988 to furnish his consent in writing in a prescribed form. The petitioner had given his consent in writing, and despite that, an erroneous instruction was given vide letter dated 28th July, 1988 as if only Desai was ready and willing to join as a junior clerk at any place immediately. The petitioner has attached three letters with rejoinder affidavit. The first letter is dated 24th June, 1988 submitted by him to the department wherein he had prayed that he may be posted at Navsari on promotion. The second letter is dated 2nd July, 1988 issued by the department requiring the petitioner to furnish his consent letter in writing. The third letter is dated 10th August, 1988 which is a departmental communication wherein it is stated that the consent application has been received and requested for further action, wherein the learned counsel for the petitioner pointed out that it is not mentioned in the letter itself that the consent given by the petitioner was a conditional one, but it clearly shows that the consent letter was received by the department and that was forwarded for further action.

5. Heard the learned counsel for the petitioner and perused the relevant record. It appears from the facts and circumstnces that some vacancies were notified to fill up backlog of SC and ST candidates. In that backlog, the petitioner and one Desai were found fit for promotion. The petitioner was appearing in the seniority list at serial no. 57, while Mr. Desai was mentioned at serial no. 66. It appears that the respondent authorities issued letter dated 2.7.1988 whereby it appears that the petitioner as well as Mr. Desai were required to submit their consent letter in the

prescribed form and even according to the learned counsel for the petitioner, the petitioner submitted his consent letter on1.8.1988 and after receiving that consent letter, the respondent authorities sent departmental communication dated 10th August, 1988 communicating that the petitioner has given consent letter that his case may be considered accordingly. It also appears that Mr. Desai had submitted his consent letter prior to 6.8.1988 and promotion letter was issued giving posting at Navsari by the letter dated 6.8.1988 and he joined his duties on 8.8.1988. From the entire facts and circumstnces, it appears that the petitioner was insisting to give posting on promotion at Navsari and not at any other place due to certain circumstances and he had not given consent letter again and inspite of the letter of the respondent authorities requiring him to furnish his consent letter, the petitioner submitted his letter on 1.8.1988 or lateron, but after receipt of that letter, the departmental communication was forwarded for promotion and posted. It appears from the letter that consent application has been given, according to the learned AGP, consent letter was not furnished by the petitioner at all. He had only submitted his application. Even if it is assumed that the petitioner had submitted his consent letter dated 1.8.1988, as it appears from the letter dated 10.8.1988, the letter was processed and the communication was sent to the higher authorities for appropriate orders. Meanwhile, it appears that pursuant to the letter dated 2.7.1988, the other person Mr. Desai had already submitted his consent letter in the prescribed form and that letter was accepted and the appointment letter was issued on 6.8.1988 and he joined the service at Navsari on 8.8.1988. As there was some delay of the claim of the petitiner for considering for appointment at Navsari, the petitioner had not submitted his consent letter as required at the earliest pursuant to the letter dated 2.7.1988. As such, the petitioner could not get appointment at Navsari though his case was considered lateron and he was given posting at Valsad vide letter dated 7.2.1990. The petitioner had not resumed his duty at the new place. Ashe had not resumed his duty, he cannot have the claim that he should be given the right of promotion from 1988. Once, he was given an opportunity of promotion and posting at a particular place, that opportunity has not been availed of by the petitioner. Hence, he is not entitled for any benefit. As such, I do not find any emrit in this petition.

6. In view of the above, the petition deserves to be dismissed and accordingly it is dismissed.

Rule is discharged with no order as to costs. However, in the facts and circumstances of the case, the department is directed to consider the case of promotion of the petitioner and give him posting as per rules and regulations at the earliest.

...

***darji